

Challenge to Constitutionality of a State Statute

This form must be completed by a party filing a petition, motion or other pleading **challenging the constitutionality of a state statute**. The completed form must be filed with the court in which the cause is pending as required by Section 402.010 (a-1), Texas Government Code.

Cause Number *(For Clerk Use Only):*

Court *(For Clerk Use Only):*

Styled: ***State of Texas v. Johnny Joe Avalos, Cause Nos. No. 04-19-00192-CR & No. 04-19-00193-CR***

FILED IN
4th COURT OF APPEALS
SAN ANTONIO, TEXAS

8/29/2019 4:30:27 PM

KEITH E. HOTTLE
CLERK

Contact information for party* challenging the constitutionality of a state statute. (*If party is not a person, provide contact information for party, party's representative or attorney.)

Name: Johnny Joe Avalos

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Address: 310 South St. Mary's Street, Suite 1910

Fax: 844-604-0131

City/State/Zip: San Antonio, Texas 78205

State Bar No. 00783557

Email: jgaristo67@gmail.com

Person completing this form is: ☒ Attorney for Party ☐ Unrepresented Party ☐ Other:

Identify the type of pleading you have filed challenging the constitutionality of a state statute.

☐ Petition ☐ Answer ☐ Motion (Specify type):

☒ Other: Appeal of order denying pretrial motion and motion for new trial declaring penal code provision unconstitutional.

Is the Attorney General of the State of Texas a party to or counsel in this cause?

☐ Yes ☒ No

List the state statute(s) being challenged in your pleading and provide a summary of the basis for your challenge. (Additional pages may be attached if necessary.)

Mr. Avalos submits that Texas Penal Code Section 12.31(a)(2) violates the Eighth Amendment to the United States Constitution, and its Texas counterpart, Article I, Section 13 of the Texas Constitution, and is therefore unconstitutional as applied to the facts of Mr. Avalos's case, because *in lieu* of the death penalty, which could not be imposed on Mr. Avalos given his well-documented intellectual disability, the statutory provision requires the default imposition of an automatic life sentence, without the possibility of a parole release, on an adult suffering from intellectual disability who is convicted of a capital offense. In support of his arguments, Mr. Avalos presents controlling and developing caselaw from the United States Supreme Court, and from a recent decision by an intermediate court of appeals from Illinois that is currently subject to review by the supreme court of that state.